

Amendment No. 1 to HB3950

Coleman
Signature of Sponsor

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Date _____

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Comm. Amdt. _____

AMEND Senate Bill No. 3994*

House Bill No. 3950

by adding the following new sections immediately after Section 1 and by renumbering the subsequent section accordingly:

SECTION 2. Tennessee Code Annotated, Section 47-1-201(b), is amended by deleting subdivisions (5), (6), (15), (16), (21) and (42) and by appropriately substituting instead the following:

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(15) "Delivery", with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record (i) that document which in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt,

warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

SECTION 3. Tennessee Code Annotated, Section 47-2-103(3), is amended by deleting the language "The" at the beginning of the subdivision and by substituting instead the language ""Control" as provided in Section 47-7-106 and the".

SECTION 4. Tennessee Code Annotated, Section 47-2-104(2), is amended by inserting the language "or associated with" between the words "accompany" and "the draft" in the first sentence of the subdivision.

SECTION 5. Tennessee Code Annotated, Section 47-2-310(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive

delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

SECTION 6. Tennessee Code Annotated, Section 47-2-323(2), is amended by inserting the language "tangible" between the language "subsection (1) a" and "bill of lading" in the first sentence of the subsection.

SECTION 7. Tennessee Code Annotated, Section 47-2-401(3), is amended by deleting the subsection in its entirety and by substituting instead the following:

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(A) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(B) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

SECTION 8. Tennessee Code Annotated, Section 47-2-503(4), is amended by deleting the subsection in its entirety and by substituting instead the following:

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(A) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(B) tender to the buyer of a non-negotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in chapter 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of

title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(A) he must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of Section 47-2-323); and

(B) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

SECTION 9. Tennessee Code Annotated, Section 47-2-505(1)(b), is amended by inserting the language "or control" between the language "retains possession" and "of the bill of lading".

SECTION 10. Tennessee Code Annotated, Section 47-2-505(2), is amended by inserting the language "of title" immediately after the language "negotiable document" at the end of the subsection.

SECTION 11. Tennessee Code Annotated, Section 47-2-506(2), is amended by deleting the language "on its face" immediately after the language "apparently regular" at the end of the subsection.

SECTION 12. Tennessee Code Annotated, Section 47-2-509(2), is amended by deleting the subsection in its entirety and by substituting instead the following:

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(A) on his receipt of possession or control of a negotiable document of title covering the goods; or

(B) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(C) after his receipt of possession or control of a non-negotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of Section 47-2-503.

SECTION 13. Tennessee Code Annotated, Section 47-2-605(2), is amended by deleting the language "on the face of" and by substituting instead the language "in".

SECTION 14. Tennessee Code Annotated, Section 47-2-705(2)(c), is amended by deleting the language "warehouseman" and by substituting instead the language " a warehouse".

SECTION 15. Tennessee Code Annotated, Section 47-2-705(3)(c), is amended by inserting the language "of possession or control" immediately after the language "until surrender".

SECTION 16. Tennessee Code Annotated, Section 47-2A-103(1)(a), is amended by deleting the language "receiving" and by substituting instead the language " acquiring" in the second sentence.

SECTION 17. Tennessee Code Annotated, Section 47-2A-103(1)(o), is amended by deleting the language "receiving" and by substituting instead the language " acquiring" in the second sentence.

SECTION 18. Tennessee Code Annotated, Section 47-2A-514(2), is amended by deleting the language "on the face of ".

SECTION 19. Tennessee Code Annotated, Section 47-2A-5264(2)(c), is amended by deleting the language "warehouseman ".and by substituting instead the language "a warehouse".

SECTION 20. Tennessee Code Annotated, Section 47-4-104(c), is amended by deleting the language "The" at the beginning of the subsection and by substituting instead the language ""Control" as provided in Section 47-7-106 and the".

SECTION 21. Tennessee Code Annotated, Section 47-4-210(3)(c), is amended by inserting the language "possession or control of the" immediately after the language "possession of the item or".

SECTION 22. Tennessee Code Annotated, Section 47-8-103, is amended by adding the following as a new subsection:

(g) A document of title is not a financial asset unless Section 47-8-102(a)(9)(iii) applies.

SECTION 23. Tennessee Code Annotated, Section 47-9-102(a)(30), is amended by deleting the language " 47-7-201(2)" and by substituting the language "47-7-201(b)".

SECTION 24. Tennessee Code Annotated, Section 47-9-102(b), is amended by deleting the language "The" at the beginning of the subsection and by substituting instead the language ""Control" as provided in Section 47-7-106 and the".

SECTION 25. Tennessee Code Annotated, Section 47-9-102(b), is amended by inserting the language ""Issuer" (with respect to documents of title). Section 47-7-102 " immediately after the language ""Issuer" (with respect to a security) Section 47-8-201".

SECTION 26. Tennessee Code Annotated, Section 47-9-203(b)(3)(D), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, or electronic documents, and the secured party has control under Section 47-7-106, 47-9-104, 47-9-105, 47-9-106, or 47-9-107 pursuant to the debtor's security agreement.

SECTION 27. Tennessee Code Annotated, Section 47-9-207(c), is amended by inserting the language "Section 47-7-106," immediately after the language "of collateral under".

SECTION 28. Tennessee Code Annotated, Section 47-9-208(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) [Duties of secured party after receiving demand from debtor.] Within 10 days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under Section 47-9-104(a)(2) shall send to the bank with which the deposit

account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 47-9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under Section 47-9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under Section 47-8- 106(d)(2) or 47-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security

entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under Section 47-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

SECTION 29. Tennessee Code Annotated, Section 47-9-301(3), is amended by deleting the language "while negotiable documents" and by substituting instead the language "while tangible negotiable documents".

SECTION 30. Tennessee Code Annotated, Section 47-9-310(b)(5), is amended by deleting the language "filing or possession" and by substituting instead the language "filing, control, or possession".

SECTION 31. Tennessee Code Annotated, Section 47-9-310(b)(8), is amended by deleting the language "paper, investment property" and by substituting instead the language "paper, electronic documents, investment property".

SECTION 32. Tennessee Code Annotated, Section 47-9-312(e), is amended by deleting the language "possession for a period" and by substituting instead the language "possession or control for a period".

SECTION 33. Tennessee Code Annotated, Section 47-9-313(a), is amended by deleting the language "security interest in negotiable documents" and by substituting instead the language "security interest in tangible negotiable documents".

SECTION 34. Tennessee Code Annotated, Section 47-9-314, is amended by deleting subsections (a) and (b) in their entireties and by substituting instead the following:

(a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under § 47-7-106, § 47-9-104, § 47-9-105, § 47-9-106, or § 47-9-107.

(b) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under § 47-7-106, § 47-9-104, § 47-9-105, or § 47-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

SECTION 35. Tennessee Code Annotated, Section 47-9-317(b), is amended by deleting the language "chattel paper, documents" and by substituting instead the language "chattel paper, tangible documents".

SECTION 36. Tennessee Code Annotated, Section 47-9-317(d), is amended by deleting the language "chattel paper, general intangibles" and by substituting instead the language "chattel paper, electronic documents, general intangibles".

SECTION 37. Tennessee Code Annotated, Section 47-9-338(2), is amended by deleting the language "case of chattel paper" and by substituting instead the language "case of tangible chattel paper".

SECTION 38. Tennessee Code Annotated, Section 47-9-601(b), is amended by deleting the language "under § 47-9-104," and by substituting instead the language "under § 47-7-106, § 47-9-104, ".

SECTION 39. The Tennessee Code Commission is authorized to include comments from the National Conference of Commissioners on Uniform State Laws concerning Article 7 in codifying the provisions of this act as it deems to be appropriate.